

HOUSE BILL 3656

By Stewart

AN ACT to amend Tennessee Code Annotated, Title 67,  
Chapter 4, Part 10, relative to equity assessment  
on cigarettes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-1001, is amended by adding the following as a new, appropriately designated subdivision:

( ) “Nonparticipating manufacturer” means a manufacturer of cigarettes that is not a “participating manufacturer” as that term is defined in II(jj) of the Tobacco Master Settlement Agreement;

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following as new sections thereto:

§ 67-4-1031.

(a) An equity assessment in the amount of two and one fourth cents (2.25 ¢) per cigarette is imposed upon all cigarettes sold by a nonparticipating manufacturer in this state. The equity assessment is in addition to all other taxes or fees.

(b) The purposes of the equity assessment are:

(1) To recover health care costs to the state imposed by nonparticipating manufacturers;

(2) To prevent nonparticipating manufacturers from undermining the state’s policy of reducing underage smoking by offering cigarettes for sale substantially below the prices of cigarettes of other manufacturers;

(3) To protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs funded in whole or in part by payments to the state under the Tobacco Master Settlement Agreement;

(4) To recoup settlement-payment revenue lost to the state as a result of nonparticipating manufacturer cigarette sales; and

(5) To fund enforcement and administration of this act and such other purposes as the legislature determines appropriate.

(c) The equity assessment shall be collected by the department from each nonparticipating manufacturer selling cigarettes in this state. The equity assessment shall be collected and reconciled by April 15 of each year for cigarettes sold in the previous calendar year. The department shall credit a nonparticipating manufacturer with any prepayment made by the nonparticipating manufacturer pursuant to this section.

(d) A nonparticipating manufacturer selling cigarettes in this state shall prepay the equity assessment not later than March 1 for all cigarettes that are anticipated to be sold in the current calendar year; except in the case of the initial equity assessment, which must be pre-paid within thirty (30) days after the effective date of this act for all cigarettes that are anticipated to be sold from the effective date of this act through the end of the current calendar year. The prepayment amount shall be either two and one fourth cents (2.25 ¢) multiplied by the number of cigarettes that the department reasonably determines that the nonparticipating manufacturer will sell in this state in the current calendar year, or ten thousand dollars (\$10,000), whichever is more. The commissioner may require a nonparticipating manufacturer to provide any information reasonably necessary to determine the equity prepayment amount. Not later than February 15 of each year, the department shall notify the nonparticipating manufacturer

of the amount of the prepayment due for the current year. The department shall increase the equity assessment prepayment amount during the year if the increase is justified by the nonparticipating manufacturer's actual sale of cigarettes.

(e) Any agent appointed by the commissioner to affix stamps shall not affix to any package of cigarettes of a nonparticipating manufacturer the stamp required under this act, unless the nonparticipating manufacturer is listed on the department's web site, as provided in § 67-4-1034. A stamping agent that violates this subsection (e) is subject to the penalties provided in § 67-4-1033.

§ 67-4-1032.

(a) A nonparticipating manufacturer may not sell cigarettes in this state unless it has furnished to the commissioner the following information:

(1) Name, address and telephone number of the nonparticipating manufacturer;

(2) Date the nonparticipating manufacturer intends to begin or began selling cigarettes in the state;

(3) Brand of cigarette the nonparticipating manufacturer will sell or is selling in this state;

(4) A statement of the nonparticipating manufacturer's intention to comply with its escrow obligation under § 47-31-103(a)(2) and the obligations in this act;

(5) Name, address and telephone number of the agent designated to receive service of process on behalf of the nonparticipating manufacturer pursuant to § 67-4-1035; and

(6) Name, address, telephone number and signature of an officer of the nonparticipating manufacturer attesting to all of the information in this section.

(b) A nonparticipating manufacturer selling cigarettes in this state on the effective date of this act shall provide to the commissioner the information described in this section within thirty (30) days after the effective date of this act; if a nonparticipating manufacturer is not selling cigarettes in this state on the effective date of this act, the nonparticipating manufacturer shall provide to the commissioner the information described in this section at least thirty (30) days before commencing the sale of cigarettes in this state.

§ 67-4-1033.

(a) A nonparticipating manufacturer that does not provide the information required under § 67-4-1032 or pay the equity assessment required by § 67-4-1031 shall not make a sale of cigarettes in this state to any person.

(b) A retail dealer, tobacco distributor, or wholesale dealer and jobber shall not purchase cigarettes acquired from or manufactured by a nonparticipating manufacturer for sale or distribution that has not provided the information required under § 67-4-1032 or made the payment of the equity assessment required by this act.

(c) The commissioner may impose on any person a civil fine, in addition to all other fines and penalties imposed by this act, for each violation of §§ 67-4-1031 – 67-4-1037 as follows:

(1) For failures to make the payments required by § 67-4-1031, a nonparticipating manufacturer will be fined in an amount not to exceed five percent (5%) of the amount improperly withheld by the nonparticipating manufacturer, per day of the violation, and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld;

(2) For all other violations of §§ 67-4-1031 -- 67-4-1037, or the rules and regulations adopted and promulgated under such sections, a nonparticipating

manufacturer will be fined in an amount not to exceed ten thousand dollars (\$10,000) per violation.

§ 67-4-1034.

The department shall maintain and regularly update a list of nonparticipating manufacturers that have complied with the requirements of this act. The department shall publish the list on its web site and provide a copy of the list to any person upon request.

§ 67-4-1035.

A nonparticipating manufacturer shall appoint and continually engage an agent for service of process. That service shall constitute legal and valid service of process on the nonparticipating manufacturer.

§ 67-4-1036.

For purposes of this act, a nonparticipating manufacturer that intends to sell or is selling a brand of cigarettes in or into this state is presumed to be the same manufacturer that previously sold that same brand in or into the state, unless the nonparticipating manufacturer can prove that the two (2) manufacturers are not affiliated. A nonparticipating manufacturer shall be prohibited from selling in or into this state a cigarette brand that was previously sold in or into this state by another nonparticipating manufacturer if that other nonparticipating manufacturer did not escrow the entire amount due under § 47-31-103(a)(2) or pay the equity assessment due under § 67-4-1031.

§ 67-4-1037.

Every nonparticipating manufacturer in this state shall give and permit the commissioner free access to such books and records, and furnish such information and reports as the commissioner may require.

SECTION 3. This act shall take effect July 1, 2010, the public welfare requiring it.